IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3106 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL GIRISHBHAI RAVJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR JM PANCHAL for Petitioners

MR AD OZA PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/05/2001

ORAL JUDGEMENT

Heard Mr.J.M.Panchal, learned advocate for the petitioner and Mr.A.D.Oza, learned Public Prosecutor with Mr.N.D.Gohil, learned APP on behalf of the respondent State.

"The relief has to be granted by the Court according to sound legal principles and ex debito justitiae. The Court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression. While exercising the powers, the Court must keep in mind the well settled principles of justice and fair play and should exercise the discretion only if the ends of justice require it, for justice is not an object which can be administered in vacuum."

[Extract : Vaish Degree College Vs. Laxminarayan reported in AIR 1976 SC page 888]

"Law cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly, rule of law must prevail but as is often said, rule of law must run akin to rule of life. And life of law is not logic but experience ..' While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, this Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction."

[Extract : Municipal Board, Pratapgadh Vs. M.S.Chawla reported in AIR 1982 SC page 1493]

"Article 226 grants an extraordinary remedy which is essentially discretionary although founded on legal inquiry. It is perfectly open for the Court, exercising this flexible power, to pass such order as public interest dictates and equity projects;

`Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependant upon considerations as of public interest."

[Extract : Shivshankar Dal Mill Vs. State of Hyryana reported in AIR 1980 SC page 1037]

Rule. Mr.A.D.Oza, learned Public Prosecutor waives service of Rule on behalf of the respondent State.

#. The brief facts of the present petition are as under :-

As per the complaint dated 31st January, 2001, the complainant is serving as Engineer Assistant at Doordarshan Kendra. It is alleged in the complaint that Flats in the name and style of `Sarva Darshan Apartments' were constructed on the plot of the land bearing Survey No.93/2 situated in the limits of village Thaltej by these builders, each flat was having super built-up area of 105 sq.yards and it was estimating at Rs.4 lacs. It is further alleged that when the complainant went to the builder to purchase the flat, the builder told him to make payment of Rs.3,05,000/- by cheque and Rs.95,000/each cash. It is also alleged in the complaint that the builder also separately demanded Rs.15,000/towards maintenace charges. It is also alleged in the complaint that the complainant purchased Flat No.12 of Nilkanth Association. It is also alleged in the complaint that Rs.3,05,000/- and Rs.95,000/- were paid. The amount of Rs.15,000/- towards maintenace charges was also paid. It is alleged in the complaint that one Mr.C.K.Daftari was the Engineer for the purpose of planning of the said Apartments. It is also alleged in the complaint that permission for constructing Aprtment was also obtained from the AUDA. It is further alleged in the complaint that after purchasing the flat, he was not given detailed plan and specifications regarding building / apartments, nor he was shown the same. It is also alleged in the complaint that Building Use Permission was also not obtained. It is also alleged in the complaint that builders have not built the said Apartments as per the plans, which were sanctioned by the AUDA. It is also alleged in the complaint that the members of the building have also not been supplied the revised plan of the building. It is also alleged in the complaint that 16 flats belong to Nilkanth Owners Association and 24 flats belong to Ghanshyam Owners Association in this Surbhi Apartments. It is alleged in the complaint that Nilkanth Owners Association also put up a big water tank on the terrace. It is also alleged in the complaint that water tank constructed was of bigger size than what was mentioned in the plan. It is also alleged in the complaint that building of Nilkantha Owners Association is constructed on hollow plinth level on the ground floor in which parking facility is there. It is also alleged in the complaint that the complainant was residing on the 2nd floor of Nilkanth Owners Association. It is alleged in the complaint that because

of devasting earthquake on 26th January, 2001, the said building collapased, as one pillar broke down. It is also alleged in the complaint that big water tank also broke down. It is also alleged in the complaint that 2nd Block has also received many cracks and it is not fit for inhabitation. It is also alleged in the complaint that other falats and buldings situated in the adjoining area are intact. It is alleged in the complaint that with a knowledge or intention that by using sub standard materials, lives of many poersons may be put in danger, the builders have constructed the building without obtaining B.U.Permission and not as per the plans. Names of the victims who have died have also been narrated in the complaint. It is alleged that in all 24 persons have died in the collapsed of building. The applicants are in judicial custody since then.

The present petitioner has filed application being Criminal Misc. Application No.163 of 2001 in the City Sessions Court at Ahmedabad for releasing him on bail and the said application has been rejected by concerned Court by judgment and order dated 29th March, 2001 and hence the order passed by the Additional Sessions Judge, Ahmedabad dated 29th March, 2001 is under challenge in the present petition by the petitioner under Section 439 of CrPC 1973 on the ground that the petitioner is completely innocent .

That the petitioners are builders of Surbhi Apartments under the auspice of Ghanshyam Owners Association and Nilkanth Owners Association. Petitioner No.1 is also owner of Guru Hari Corporation. That, Surbhi Apartments is built-up by two Associations i.e. Ghanshyam Owners Association and Nilkanth Owners Association. Ghanshayam Owners Association has two buildings out of three and Nilkanth Owners Association has one building. Thus, Surbhi Apartments consists of in all three Blocks. The petitioners in the present petition have submitted that they are real brothers and are partners of a private limited concern named above. It is further submitted that the petitioners had purchased land and handed over the construction work to engineers and Architects. The petitioners also submitted that the construction work of Surbhi Apartments were constructed under the supervision of structural engineer namely one Mr. Chandrakant K. Daftari. It is further submitted that the earthquake is an act of Nature for which accused cannot be held responsible or liable and that too under Section 304 of IPC. It is further submitted on behalf of the petitioner that prima facie, the petitioners, who are not holding any degree and who

are not doing any work as contractor / engineer or architect and who have no knowledge, cannot be held liable or reasonsible for the construction put up by the other persons. According to the petitioners, they are prepared even today to reconstruct the damaged building and damaged portion of the building at their own expense and restore the damaged flats to a condition in which the affected flat owners can occupy and stay in their flats with complete guarantee of safety and security. It is also submitted that the petitioner is prepared to carry out and abide by any conditions that may be imposed by this Court.

#. Learned Advocate Mr.J.M.Panchal appearing on behalf of the petitioner has submitted that present petitioners are prepared to file undertaking before this Court to the effect that damaged building `Surabhi Apartments' will reconstruct by Ghansham Owners Asscoation and Nilkanth Owners Association.

That as regards the damaged building Surbhi Apartments which was constructed by the petitioners who are builders of Surbhi Apartments under auspice of Ghanshyam Owners Assocation and Nilkanth Owners Association. The petitioner No.1 is also owner of Guru Hari Corporation. The petitioners undertake to reconstruct and restore all the damaged / collapsed flats by undertaking constructing myself at my entire cost. However, if the flat owner or owners choose and desire to pay to me any amount by way of contribution as may be received from the Government aid or any agency by him or them, it will be open to me accept the same but I will not compel in any way any of them to make any such contribution by resorting to litigation or in any other manner I further undertake to complete the construction by the end of June, 2003 and put the respective flat owners in actual possession of their respective flats. If I fail in any way to deliver possession of reconstructed flats to the respective owner or owners by the end of June, 2003, I will pay rent compensation at the rate of Rs.5000/- per month to each of such flat owner. If however any flat owner chooses not to have reconstructed flat, I will pay him the price thereof paid by him. Mr.J.M.Panchal, learned advocate appearing on behalf of the petitioner has also further submitted that the petitioner is ready to pay Rs.75,000/- to the legal heirs of twenty four deceased whose names are mentioned in complaint within period of 15 days from the date of his release from jail.

#. Learned advocate Mr.J.M.Panchal has prepared draft

undertaking and copy of the said draft undertaking has also been given to the learned PP Shri A.D.Oza. However, Mr.A.D.Oza, learned PP has verified the statement made by the present petitioner in the draft undertaking.

#. In the present petition, this Court has issued notice on 26th April, 2001 made it returnable on 3rd May, 2001 and thereafter the matter has been adjourned by this Court on 4th May,2001. The respondent State has filed reply against the present petition which is taken on record.

Reling on the affidavit filed, the learned Public Prosecutor Mr.A.D.Oza has vehemently opposed the bail application filed by the present petition on the ground which has been raised in para-5 to 7 of the reply to the effect that the samples of the building for deciding the facts whether the structure was faulty or not were taken and sent to NCB, Delhi for its analyses and the expert report of the samples is still not received by the Investigating Agency as well as the samples of the soil is also sent to Hyderabad for its testing and the soil test report is yet to be received. Mr.Oza, learned PP has further submitted that FSL team has visited on 7-2-2001 and following preliminary observations have been pointed out as under :-

(1) The capacity of the water tank wat 25,000 ltrs.

(2) that the tie-beam or plinth beam was not found in the foundation.

(3) Rust were seen in colums steel rods.

(4) that there were six rods in column of first floor and there were five joints at one point and because of the load on the rods the rods bent downwards.

(5) there were smooth construction joints in column and beam actually there must be inter-locking.

(6) the lift box was framed by briock work instead of RCC work.

(7) there was over head tank on the terrace in the middle of two blocks which was collapased.

(8) alluvium soil was found in the foundation of the building.

Mr.Oza, learned PP has further pointed out that there are chances of petitioner's jumping the bail as looking to the seriousness of the offence and punishment provided under the law. Mr.Oza, has shown some apprehension that it would be difficult for the investigating agency to procure the presence of the accused during the investigating and at the time of trial and further pointed out that this Court may look into the fact and circumstances and also consider the fact that other builders are not yet arrested and not cooperating to prosecuting agency. It is also pointed out by him that this Court may also consider the aspect of impact on society as there is thousands of death and especially in the city of Ahmedabad approximately 750 person have died. Mr.Oza, learned PP has also submitted that considering the charges levelled under provisions of Section 304 of IPC, which itself indicate the offence is very serious in nature and the same requires consideration and therefore the present application deserves to be rejected accordingly. Mr.A.D.Oza, learned PP has also submitted that looking to the peculiar facts and circumstances of this case, the petitioner has come forward to file undertaking and this Court is considering the undertaking of the present petitioner. Therefore, Mr.Oza, learned PP has submitted that only on this ground, no reasoned order may be passed otherwise it will come into way of the respondent - State Government while opposing bail application filed by other similarly situated builders.

#. I have considered the averments made in the present application and also considering the statement of Mr.J.M.Panchal, learned advocate for the petitioner in respect of the draft undertaking so also considering the submissions made by both the learned advocates for the respective parties without deciding the merits of the matter and considering the request of both the learned advocates for the parties who requested not to pass reasoned order and therefore considering the matter and before passing the final order, according to my opinion, some observations made by the Apex Court as well as Division Bench of this Court while dealing with such application which are pertinent to quote in relevance of the facts and circumstances of this case which are reproduced as under :-

Recently, the Apex Court in case of GAYA PRASAD V. PRADEEP SRIVASTAVA reported in (2001) 2 SCC page 604, para-19 observed as under :-

"The time is running out for doing something to solve the problem which has already grown into

monstrous form. If a citizen is told that once you resort to legal procedure for realisation of your urgent need you have to wait and wait for 23 to 30 years, what else is it if not to inevitably encourage and force him to resort to extra-legal measures for realising the required reliefs. A Republic, governed by rule of law, cannot afford to compel its citizens to resort to such extra-legal means which are very often contra-legal means with counterproductive results on the maintenance of law and order in the Country."

There is recent observation of the Apex Court in case of MAKAHN LAL BANGAL V. MANAS BHUNIA, reported in (2001) 2, SCC 652, para-26,

"An alert Judge actively participating in court proceedings with a firm grip on oars enables the trial smoothly negotiating on shorter routes avoiding prolixity and expeditiously attaining the destination of a just decision. The interest of the counsel for the parties in conducting the trial in such a way so as to gain success for their respective clients is understandable but the obligation of the Presiding Judge to hold the proceedings so as to achieve the dual objective search for truth and delivering justice expeditiously - cannot be subdued. However, sensitive the subject matter of trial may be; the courtroom is no place of play for passions, emotions and surcharged enthusiasm."

Recent observation of the Apex Court in case of GOVERNMENT OF A.P. V. A.P. JAISWAL reported in (2001), 1 SCC 748, para-24 which runs as under :

"Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect for the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice."

There is recent observation of the Division Bench

of this Court in case of PEOPLES UNION FOR C.L. VS. STATE [Coram : D.M.Dharmadhikari, C.J.] reported in 2001 (1) G.L.R., page 547 observed that;

"A Judge on assuming office during his tenure sits cut-off from the society as he cannot continue to be in public life, but as he also comes from the society with his own experience of it, he is better stationed at a distance from the problems of the society to view them in a more objective, detached and dispassionate manner, than those involved in it, and for that reason, he is more suited to resolve conflicts and competing claims of the individual and the society. [para 22]".

The Apex Court in a decision rendered in case of JOGINDAR KUMAR VS. STATE OF UP reported in AIR 1994 S.C. page 1349, certain observations are quoted as under :-

`No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Office in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be

avoided if a police officer issues notice to person to attend the Station House and not to leave station without permission would do. The, there is the right to have some one informed. That right of the arrested person, upon request, to have someone informed and to consult privately with a lawyer was recognised by Section 56(1) of the Police and Criminal Evidence Act, 1984, in England. These rights are inherent in Arts. 21 and 22 (1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, the Supreme Court issued the following requirements :

(1) An arrested person being held in custody is entitled, if he so request to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

(2) The police officer shall inform the arrested person when he is brought to the police station of this right.

(3) An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Arts. 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with. The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various Police Manuals."

23. In India, Third Report of the National Police Commission at Pg-32 also suggested :

"... An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances :-

(i) The case involves a grave offence like murder, dacoity, robbery , rape etc. , and it is necessary to arrest the accused and bring his

movements under restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade the process of law.

(iii) The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines ... "

The Apex Court in case of GURCHARAN SINGH V. STATE [DELHI ADMN.] reported in AIR 1978 page 179 has in para-22 observed as under :-

"In other non-bailable cases the court will exercise its judicial discretion in favour of granting bail subject to sub sec (3) of Section 437, Cr.P.C. , if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437 (1) Cr.P.C. and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence."

The Apex Court in case of STATE VS. CAPTAIN

JAGJIT SINGH reported in AIR 1962 SC 253 (Supra) has made observed as under :-

> `It (the High Court) should then have taken into account the various considerations, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or the State, and similar other considerations, which arise when a court is asked for bail in a non bailable offence. It is true that under Section 498 of the Code of Criminal Procedure, the powers of the High Court in the matter of granting bail are very wide; even so where the offence is non bailable, various considerations such as those indicated above have to be taken into account before bail is granted in a non bailable offence", we are of the opinion that the above observations equally apply to a case under Section 439 of the new Code and the legal position is not different under the new Code."

#. After considering the above observations as well as the averments made in the application and reply and considering the draft undertaking which has been suggested by the learned advocate Mr.J.M.Panchal, it is a duty of the Court to see and protect the interest of the person who have become victim in such grave incident and simultaneously also to consider the fate of the persons who are behind the bar because of this incident. It is also necessary to keep in mind the fact that now the chargesheet has been submitted by the investigating officer.

#. I have considered the objections raised by the learned Public Prosecutor against the present petition. The main contention of Learned P.P. is on merits and second objection that investigation is pending in a crucial stage. The third objection that F.S.L. Report is awaited and prima facie looking to preliminary report of FSL, the material which has been used by the builder is of poor quality and no standard material used by the builder and construction is not in accordance with Rules and Bye-laws of the Municipal Corporation. Looking to the objections of Learned P.P. this Court can examine the merits of the case and to pass appropriate order, but

the real worry is that, it will come in way of the State Government in respect of pending other similar matters, which are more than 70 in numbers pending before this Court before the concerned Sessions Courts. This Court has passed similar order after considering the similar undertaking in Criminal Misc. Application Nos. 1677/2001 order dated 18-4-2001, Criminal Misc. Application No.2158 / 2001 order dated 24-4-2001 and Criminal Misc. Application No. 3068 / 2001 order dated 30-4-2001. In all these matters learned PP Mr.A.D.Oza had appeared and after considering his submission, this Court has passed order after taking into account, the undertaking which has been given by the concerned petitioner in each each of the petition. It is also necessary to note that in similar matter of the Builders, Crim. Misc. Application No. 1238 / 2001 order dated 1-5-2001, this Court [Coram : C.K.Buch, J.] has passed similar order considering the similar type of undertaking wherein also learned PP Mr.A.D.Oza has appeared. In such situation though, there is an objection of Learned Public Prosecutor, if other petitioner come forward before this Court and prepare to file same undertaking as considered by this Court in earlier petitions, then in such circumstances, this Court differ the decision on the ground that consistency is the corner stone of the Administration of Justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect for the rule of finality. It is a with a view to achieve consistency in judicial pronouncement, the Courts have evolved the rule of precedents. Principle of stair decisis etc. These rules and principles are based on public policy and if these are not followed by Court then there will be CHAOS in the administrations of justice. It is also necessary to note that it is well established principle that while examining the bail application, the Court normally avoid the reason, either in granting or refusing Bail Application.That recently in the case of KANTIBHADRA SHAH AND ANOTHER Vs. STATE OF WEST BENGAL, reported in 2001 [1] SCC page 722, the following observation of Apex Court in para-12 is reproduced as under :-

"12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a

> Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to nest stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the Court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985."

Therefore, considering the above observation made by Apex Court and considering to have consistence approach in similar matters, though there is an objection of learned public prosecutor Mr.A.D.Oza on merits, but I am not passing a reasoned order on merits on the ground that it will definitely come in a way of the State Government in pending such bail applications either before this Court or before Courts filed by the Builders and other connected persons. Earlier in all similar matters, I have not passed reasoned order and therefore, in present case also I am not passing the reasoned order in view of the above special facts and circumstances. However, it is necessary to note that now investigation is over and chargesheet is submitted in the Court by concerned Investigating Officer in the present case.

Recently, the Apex Court has considered the bail application and certain principles has been enumerated by the Apex Court in the case of PRAHALAD SINGH BHATTI Vs N.C.T., Delhi and another, reported in 2001 AIR S.C.W. page 1263. The relevant observations on para-8 are quoted as under :-

> "The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment

> which conviction will entail, the character, behavior means and and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public or State and similar other consideration. It has also to be kept in mind that for the purpose of granting the bail the Legislature has used kept in mind that for the purpose of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

In light of the above observations made by the Apex Court, it is necessary to note that if the accused released by the Court and his presence in the society adversely affect or having adverse impact in the mind of society, then normally bails cannot be granted, but in a converse situation if Accused released by the Court and his presence will helpful to the victim of the society, then Court may consider is a relevant factor for granting the bail in favour of accused.

In the present case, if the Builder remains in jail, it will not helpful in any manner to the members of housing society, whose flat/s are collapsed and their family members are died in such incident. But when Builder come forward with a bonafide undertaking and agreed to reconstruct the total flats collapsed in the incident at his own cost without taking a single penny from the concerned member/s and prepared to pay Rs.75,000/- to each person who died in incident and other benefited terms, then in such circumstances according to my opinion, the presence of the petitioner will not adversely affect or having any adverse impact on the society. This is also one of the important considerations while examining the bail application.

#. After considering the aforesaid statement made by the learned advocate Mr.J.M.Panchal appearing for the

petitioner to the effect that the petitioner will file necessary undertaking which has been suggested as above and considering the submissions of both the learned advocates and further considering the fact that as per the statement made at the Bar by learned advocate Mr.J.M.Panchal, that necessary undertaking will be filed by the petitioner before this Court within 10 days from the date of release and considering the peculiar facts and circumstances emerging of this case so also taking into consideration observations made by the Hon'ble Apex Court and the Division Bench of this Court, following order is passed.

The parties do not press for reasoned order. Considering the submissions made on behalf of the parties, and having regard to the circumstances and facts of the case, the application is allowed and he is ordered to be released on bail in connection with Crime Register No. I- 18 / 2001 registered at Sola High Court Police Station for the offence charged against him in this application on executing bond of Rs.25,000/- each (Rupees Twenty Five Thousand only) with one surety of the like amount to the satisfaction of the lower Court and subject to the conditions that he shall,

a) not take undue advantage of his liberty or abuse his liberty;

b) not to try to tamper or pressurize the prosecution witnesses or complainant in any manner;

c) maintain law and order and should co-operate the investigating officers;

d) not act in a manner injurious to the interest of the prosecution;

e) mark their presence before Sola High Court Police Station between 9.00 a.m. to 2.00 p.m. for a period of three months from the date of release and thereafter the petitioners shall mark his presence before the aforesaid police station once in a month preferably on 1st Sunday of each month till the trial is over.

f) furnish the address of his residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

g) surrender his Passport, if any, to the lower court within a week;

h) it is directed to the petitioners to co-operate with investigation and to remain personally present as and when required by the investigating officer.

3. If breach of any of the above conditions is committed, the City Sessions Judge, Ahmedabad will be free to issue warrant or take appropriate action in the matter.

4. Bail before the lower Court having jurisdiction to try the case. It would be opened to the trial court concerned to give time to furnish the solvency certificate if prayed for.

#. In view of statement made by the learned Advocate Mr.J.M.Panchal on behalf of the petitioner, necessary undertaking which is annexed to this order, is directed to be filed before this Court within 10 days from the date of the release of the petitioner without fail.

#. It is further directed to the petitioners to supply xerox copy of the affirmed undertaking to the office of the Public Prosecutor, concerned trial court and to the concerned investigating officer.

##. It is also made it clear that the amount of Rs.75,000/- in respect of 24 victims who died in the incident, shall not come in the way for claiming compensation in accordance with law.

##. It is further directed to the petitioners that in pursuance of the statement made before this court, necessary undertaking as referred to in this order is required to be filed before this Court by the petitioner within 10 days from the date of release and the such undertaking is required to be strictly complied with by the petitioner without fail, otherwise in the event of non compliance of any such term of the said undertakings, the respondent State as well as the concerned members of `Surbhi Apartments' - a building in question in the present order, and legal heirs of 24 victims are entitled to file necessary application before this Court for cancellation of order granting bail in favour of the petitioner.

##. It is open for the parties including the concerned members of the said `Surbhi Apartments' and legal heirs

of the victim in case of any difficulty in respect of any such terms as incorporated in the undertaking will be at liberty to apply before this Court by way of necessary application.

##. This order is passed by this Court considering the peculiar facts and circumstances of the case as well as considering the undertaking of the petitioner and undertaking to make the payment to the victim, therefore this order may not be treated as precedent for other similar cases.

##. However, it is made it clear that undertaking that may be filed by the petitioner before this Court pursuant to the order passed by this Court, will not come in the way in any manner while facing and / or defending the proceedings arising from C.R. No. I - 18 / 2001 of Sola High Court Police Station. It is also made it clear that the present undertaking which will be filed by the present petitioner only in connection with relief of grant of bail in favour of the petitioner and therefore such undertaking will not amounts to an admission of the petitioner in respect of criminal liability which will be obviously required to be faced by the petitioner in respect of the offence registered against him pursuant to C.R. No. I - 18 / 2001 - Sola High Court Police Station.

##. Before parting with the present order, according to my opinion, the humanitarian stand and approach taken by the petitioner is in real sense satisfying the genuine rehabilitation of the members and victim affected on account of earthquake and have become victim of this unprecedented earthquake.

Rule is made absolute accordingly. Direct service is permitted today.

Date : 10-5-2001 [H.K.Rathod, J.]

#kailash#

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3106 of 2001

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(1) PATEL GIRISHBHAI RAVJIBHAI &
(2) PATEL VIRENDRABHAI RAVJIBHAI

Versus

STATE OF GUJARAT

: U N D E R T A K I N G :

We, (1) Patel Girishbhai Ravjibhai and (2) Patel Virendrabhai Ravjibhai, the applicants petitioners accused, do file this undertaking as follows.

The petitioners are builders of Surbhi Apartments under the auspice of Ghanshyam Owners Association and Nilkanth Owners Association. The petitioner No.1 is also owner of Guru Hari Corporation.

That `Surbhi Apartments' is built up by two Associations i.e. Ghanshyam Owners Association and Nilkanth Owners Association. Ghanshyam Owners Association has two buildings out of three and Nilkanth Owners Association has one building. Thus, Surbhi Apartments consist of in all three blocks. The petitioners are real brothers and are partners of Private Limited concern named above. Therefore present undertaking is filed on behalf of the both association i.e. Ghanshaym Owners Association and Nilkanth Owners Association as partners and also in personal capacity of petitioners which is binding to the petitioners and above referred both owners Associations.

That the collapsed building - Surbhi Apartments was built up under my supervision and guidance. That as regards the damaged building of Surbhi Apartments, we undertake to reconstruct and restore all the flats by undertaking constructing myself at my own entire cost. However, if the flat owner or owners choose and desire to pay tome any amount by way of contribution as may be received from the Government aid or any agency by him or them, it will be open to me accept the same but we will not compel in any way any of them to make any such contribution by resorting to litigation or in any other manner. We further undertake to complete the construction by the end of June, 2003 and put the respective flat owners in actual possession of their respective flats. If we fail in any way to deliver possession of reconstructed flats to the respective owner

or owners by the end of June, 2003, we will pay rent compensation at the rate of Rs.5000/- per month to each of such flat owner. If however any flat owner chooses not to have reconstructed flat, we will pay him the price thereof paid by him.

We further undertake to pay Rs.75,000/- to the legal heirs of the twenty four deceased whose names are mentioned in complaint and list of 24 deceased is also annexed to this undertaking. We will pay Rs.75,000/to each individual legal heir of each deceased of all twenty four deceased, which in all comes to Rs.18,00,000/- [Rupees Eighteen Lacs only] within 15 days from the date of release of the petitioners from jail.

What is stated hereinabove is true and correct.

Ahmedabad
Date : / /2001 ----------

NAMES OF THE DECEASED PERSONS, AGE AND FLAT NUMBER AS PER THE COMPLAINT REGISTERED VIDE C.R. NO.I-18 / 2001 WITH SOLA HIGH COURT POLICE STATION IN RESPECT OF CR.MISC. APPLICATION NO : 3106 / 2001.

Sr.No.	Name	Age	Flat Nos.
1.	Vishav Mukeshbhai Patel	4	19
2.	Mukeshbhai Babubhai Patel	27	19
3.	Javanikaben w/o Mukeshbhai Patel	26	19
4.	Deepakumar Rajeshbhai Goswami	2 & 1/2	30
5.	Vinodpuri Karshanpuri Goswami	25	30
6.	Prabhatbhai Bijalbhai Desai	38	40
7.	Ashaben d/o Prabhatbhai	2	40
8.	Kantaben w/o Prabhatbhai	35	40
9.	Bhikhabhai Revashankar Mistri	65	22
10.	Kamleshbhai Bhikhabhai Mistri	25	22
11.	Suryaben w/o of Bhanuprasad Patel-56	9	
12.	Jayaben w/o Jayshankar Shukal	80	11

13. Jaymeenkumar Bhanubhai Pate 27 9
14. Yogiben alias Yogindraben 55 11
 J. Sukal [Dave]
15. Parth Dilipkumar Mistri 11 36
16. Gitaben w/o Dilipkumar Mistri 30 36
17. Jaimil Dilipkumar Mistri 8 36
18. Subhangi d/o Mukeshkumar Garg 4 34
19. Punamben w/o Mukeshkumar Garg 26 34
20. Shitalben d/o Mansukhlal Sheth 30 37
21. Hiralben d/o Mansukhlal Sheth 28 37
22. Paraskumar s/o of Mansukhlal Sheth-30 37
23. Mansukhlal Jamnadas Sheth 58 37
24. Nilamben w/o Mansukhlal Sheth 50 37.

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